

# BOARD OF PESTICIDES CONTROL

**June 4, 2004**

Colby/Thomas Room, Hampton Inn  
425 Kennedy Memorial Drive, Waterville

## AGENDA/MINUTES

**9:30 A.M.**

The regular monthly meeting was called to order at 9:35 A.M. by Chair Carol Eckert. Other members in attendance included Berry, Humphreys, Jemison, Simonds and Walton. Bradstreet was unable to be present.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the April 23, 2004 Board Meeting

Action Needed: Amend and/or Approve.

- ☒ Walton/Humphreys: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Maine Public Service Company's Request for Variance for Substation Vegetation Control Program

The Board's drift regulations allow applicator's to seek a variance from any standards they feel are unreasonable for their type of operation. This electrical utility will be hiring a licensed contractor to control vegetation in its 50 company owned substations and storage yards and possibly up to 22 customer owned substations in Aroostook and northern Penobscot Counties. The Board has approved variance permits in the past but questioned why they have been unable to identify sensitive areas surrounding these stationary sites. The company has responded by starting to identify all sensitive areas within 500 feet but does not feel it will be completed in time for this season's applications. They are therefore seeking a variance so they do not have to record all sensitive areas within 500 feet of each site. Instead, they propose taking a number of other precautions including having a master applicator on site at the time of applications, using herbicides at their lowest effective rate, creating buffer zones within the fenced properties, using drift adjuvants in equipment with special nozzles to create coarse droplets, and applying the spray at the lowest possible point of release. Maine Public Service Company plans to post warning signs on each side of each substation but does not propose to take any other steps toward public notification. The Board's staff will point out that all variances approved to date have included a requirement for newspaper notices and in some instances letters to affected municipalities.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Approve/deny the variance request.

- ☒ Batteese reminded the members that this company had received variances in the past, and that most other variances are conditioned to require publishing of newspaper notices and sending letters to affected communities. He also pointed out that Glenn Nadeau of Maine Public Service was in the audience in case members had any questions. Simonds asked if the company would need a variance in future years and Nadeau assured him that would not be necessary as they would complete the process of identifying all sensitive areas this summer. Humphreys asked if the Board should condition the permit to require the newspaper notices and letters to communities. Nadeau explained that it should not be necessary based on the method of application and the fact he as a licensed Master applicator would be on site the entire time of the treatments.

Walton/Berry: Motion made and seconded to approve the variance as requestd.

In Favor: Unanimous

4. Continuing Development of Regulation to Establish Standards for Indoor Applications

At its April 11, 2003 planning session, the Board determined that the top priority for any discretionary tasks should be to revisit the subject of developing standards for indoor pesticide applications. This topic has been discussed on several occasions since 1987 and was last addressed by a stakeholder group in 1998 and 1999. A wide range of recommendations has been generated over the years but more pressing needs for rule-making have prevented the Board from taking any action. At the March meeting, the Board briefly reviewed the various proposals to date and accepted a staff recommendation to develop a new draft regulation following the model of Chapter 27. That initial draft of the proposed rule was considered at the April meeting and focused on buildings that are occupied for long periods by residents, workers or children in licensed daycare facilities. The members asked the staff to check further on the feasibility of including all daycare facilities, determine if some of the notice provisions for workers are already addressed by OSHA regulations, and explore additional protections for persons living in residential care facilities. The staff will report their findings at this meeting.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Discussion and determination if the Board wishes to make any further revisions to the draft before initiating rule-making.

- ☒ Batteese called the member's attention to his memo of May 27<sup>th</sup> and advised that the staff recommended keeping the requirement for evacuating rooms prior to treatment even though most new labels carried such provisions. He also referenced the message from Mark Randlett and recommended that the rules only include childcare facilities and nursery schools that total about 950 entities. Eckert asked if this included Head Start programs and Randlett stated he did not know but thought so since they seemed to be quite organized. On the subject of employers notifying employees, Jennings offered

another example of OSHA officials indicating it should be the case but it is not universally practiced. Eckert noted that the hospitals do well on providing MSDS for products regularly used in their facilities but don't do as well on the infrequently used chemicals. Randlett pointed out that Section 4E was duplicative and should be incorporated into Section 4.D. Eckert then asked if the members wished to make any other changes, and there was consensus that the members were ready to have staff initiate rule-making and schedule a public hearing for the start of the next meeting.

5. Review of Planning Session Topics and Prioritization of Discretionary Tasks for Future Action

On May 14, 2004 the Board spent a day with staff discussing a wide range of issues including a pending budget deficit, establishing buffers to protect water bodies, amending Chapter 60 to exclude a single person or family, providing more public education through newspapers, preparing for GMO registration requests, controlling vertebrate pests with registered products, documenting pesticide related health problems and reviewing potential rule-making initiatives. The staff has prepared both a list of the topics that may be addressed rather easily and another that will require considerable attention by the Board.

Presentation By: Robert I. Batteese, Jr.  
Director

Action Needed: Determination that the lists are correct and prioritization of discretionary tasks that will take considerable time to accomplish.

- ☒ Batteese started by asking the members if they agreed with the notes from the training session and the staff's effort to sort the tasks into two lists. There was no disagreement and Eckert asked the members to complete the ballots and return them to staff before they left for the day.

6. Review of National Swimming Pool Foundation Certified Pool Operator Program

At the 2003 planning session the Board and staff discussed how to enforce applicator licensing rules on persons applying disinfectants. One group needing attention was the public pool and spa operators who use high-risk chemicals in areas where the potential for both chemical injury and serious disease exists. The Board expressed interest in learning more about a program recommended by the Department of Human Services. A staff member recently completed the course and found the instructor willing to provide additional information so the applicators will understand that the chemicals are pesticides and they are obligated to follow the product label. The staff will now ask the members if they are willing to exempt operators who complete the Certified Pool/Spa Operator Course from the Board's commercial applicator licensing requirements.

Presentation By: Gary D. Fish  
Certification & Licensing Specialist

Action Needed: Discussion and decision on an appropriate course of action for persons applying disinfectants to swimming pools and spas.

- ☒ Fish reported on his experience taking the two days of training presented by the National Swimming Pool Foundation (NSPF) and then completing its three-hour open book exam. He felt the course was very thorough and that it should meet the Board's needs if the NSPF added some specific pesticide information to their curriculum as promised. He explained that the Board could either accept the NSPF certification as the basis for a Board license or simply exempt those operators who passed the course from commercial applicator licensing. Randlett indicated he did not have a problem with either option. Humphreys thought their certification would be a great step forward and Simonds anticipated that the NSPF would have to present more courses than normal. Eckert asked how the members wished to proceed and there was consensus the staff should draft a policy exempting NSPF certified operators from Board licensing for consideration at the next meeting.

7. Consideration of Staff Negotiated Consent Agreement with Ace Hardware Corporation of Oakbrook, Illinois

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case results from a failure of this retailer to renew their General Use Pesticide Dealer License in both 2001 and 2002 after having been licensed the previous three years.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that the failure to license appeared to be due to administrative oversight so he did not seek a large penalty.

Simonds/Jemson: Motion made and seconded to approve the consent agreement.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Corinth True Value of Corinth

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves the sale of a chlorpyrifos product in 2003 that a Board inspector had placed under a Stop Sale, Use, Removal Order in 2002 because the registration had been cancelled.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings pointed out he sought a higher penalty because this case involved the continued sale of a product that had been canceled because of potential health risks to children.

Humphreys/Berry: Motion made and seconded to approve the consent agreement.

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Bethel Inn & Country Club of Bethel

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. This case involves the application of pesticides to the turf at the Bethel Inn & Country Club that is considered a place open to use by the public. During the years 2001, 2002 and 2003, company employees performed multiple pesticide applications at the course. At the time of these applications, no company employees were licensed as a commercial applicator. These actions constitute a violation of the Board's statute that requires a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings  
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- ☒ Jennings indicated it took a long time to settle this case and involved the company making two payments over a six month period.

Simonds/Humphreys: Motion made and seconded to approve the consent agreement.

In Favor: Unanimous

10. Other Old or New Business

a. Update on Pesticide Container Recycling - R. Batteese

- ☒ Batteese reported he was still waiting for a reply from Rob Denny, Agricultural Container Recycling Council, but that Denny was still willing to supply a baler for the central Maine area. He promised to report back again at the next meeting.

b. Amendment to Section 18 Registration for fenbuconazole - W. Smith

- ☒ Smith explained that Dow AgroSciences had run low on its inventory of Indar but had an alternative formulation called Enable. He reported EPA approved his letter to amend the Section 18 registration for the additional formulation in less than 24 hours.

c. Letter of Support for CDC Grant Request to Address Lyme Disease - L. Hicks

- ☒ Hicks indicated that DHS was still deciding whether to submit the grant request, but if it was approved, her role would be to evaluate the recommended products for tick control in the same manner as was previously done for the mosquito insecticides.
- d. Other ???
- ☒ Batteese reported the citizens of Harpswell had adopted an ordinance banning the use of insect growth regulators and the aerial application of insect growth regulators or any other insecticide whose product label indicates it is harmful to aquatic invertebrates. He also noted an aerial applicator had treated 25 acres on one island in Harpswell seven days after the ordinance was adopted and the Town was now trying to decide if it should initiate enforcement action
- ☒ Simonds distributed a draft of a letter to Commissioner Spear describing the financial difficulties in the Pesticide Control Fund and asking for the Department to address the problem. After a brief discussion, Simonds asked that the members e-mail him any suggestions for revisions that he could bring back to the next meeting.

11. Schedule and Location of Future Meetings

- a. The Board is holding open the dates of July 14 -16 for possibly holding a meeting in Aroostook County in conjunction with the Maine Potato Board's Industry Tour.
- ☒ Batteese distributed a proposed itinerary and suggested the only possible time for a meeting would be Friday morning in Presque Isle. Several members indicated they had developed conflicts that would prevent them from attending a meeting that week anywhere in the state. The Board then scheduled the next meeting for Wednesday, July 21<sup>st</sup> in Waterville.
- b. Location and date for following meeting.
- ☒ The Board decided to wait until the next meeting to set a date in hopes that they could skip having a meeting in August.

12. Adjourn

- ☒ A motion to adjourn was accepted at 11:13 A.M.

Robert I. Batteese, Jr.  
Director